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May 19, 2005

VIA ELECTRONIC MAIL AND 1ST CLASS MAIL SERVICE

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp.,
NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III
LLC, and Xspedius [Affiliates] of an Interconnection Agreement with
BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the
Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:


Enclosed is the original and ten (10) copies of the **Motion to Amend Arbitration Plan and Procedural Schedule** for filing on behalf of NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates], and with the consent of BellSouth Telecommunications, Inc. ("BellSouth") and the Office of Regulatory Staff ("ORS") in the above-referenced matter. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the enclosed envelope.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,


John J. Pringle, Jr. *by CR*

JJP/cr
cc: Office of Regulatory Staff
all parties of record
Enclosures

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-57-C

IN RE:

Joint Petition for Arbitration on behalf)	
of NewSouth Communications Corp.,)	
NuVox Communications, Inc., KMC)	
Telecom V, Inc., KMC Telecom III,)	MOTION TO AMEND ARBITRATION
LLC and Xspedius [Affiliates] for an)	PLAN AND PROCEDURAL SCHEDULE
Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as)	
Amended.)	

NewSouth Communications Corp. ("NewSouth"); NuVox Communications, Inc. ("NuVox"); KMC Telecom V, Inc. ("KMC V") and KMC Telecom III LLC ("KMC III") (collectively, "KMC"); and the Xspedius Affiliates (collectively "Xspedius") (together, the "Joint Petitioners" or "CLECs"), by their attorneys, and with the consent and support of BellSouth Telecommunications, Inc. ("BellSouth") and the Office of Regulatory Staff ("ORS") respectfully request that the Commission amend the procedure and arbitration plan set out in Order No. 2005-517 in this Docket as follows:

BACKGROUND

1. Joint Petitioners filed the above-captioned Joint Petition for Arbitration of an interconnection agreement with BellSouth pursuant to Section 252(b) of the Communications Act.

2. The commencement of negotiations for purposes this Docket began on October 6, 2004.

3. Section 252(a)(4)(C) of the Act provides that the Commission must resolve each issue set forth in the Joint Petition (as well as those raised in BellSouth's response) within nine months of the request for an commencement of negotiations. Given the October 6, 2004 commencement date, the statutory deadline under Section 252(a)(4)(C) would be on or about July 6, 2005.

4. Accordingly, Order No. 2005-517 provides that the Commission must "hear and rule on this matter on or before July 6, 2005."

5. This Joint Motion seeks a 3-month extension of that deadline to on or about October 6, 2005.

THE PARTIES REQUEST THAT THE THE "DEADLINE" BE EXTENDED

6. First, because the only "penalty" or "sanction" for failing to act within the nine month window is a party's ability to go to the FCC for resolution, the timeframe established in the Act exists for the benefit of the parties.

7. Second, it is clear as a practical matter that Section 252(a)(4)(C) of the Act does not bar this Commission from granting this Joint Motion, based upon the experience of parties in other states. It is fairly common practice across the BellSouth region and elsewhere for parties, including CLECs, BellSouth and state commission staffs, to voluntarily waive application of the nine-month deadline set forth in Section 252(a)(4)(C). Indeed, it is fair to state that this is routine practice in numerous southeastern states, including Florida, Georgia, Louisiana and North Carolina, and Alabama.

8. Specifically, the statutory deadline has been waived in ongoing arbitration proceedings involving Joint Petitioners and BellSouth in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina and Tennessee.

9. As these instances demonstrate, waiver is appropriate in circumstances where no party opposes its application. After all, the nine-month deadline exists for the benefit of the parties to the arbitration – to provide assurance that the arbitration will be decided within a definite time frame. Where, as in this case, the parties are comfortable with working beyond such a deadline, no party would be prejudiced by grant of a waiver, and in light of the circumstances described below, waiver is clearly in the public interest.

10. Similarly, state and federal law gives parties the right to agree to waive any number of procedural and substantial rights. For example, parties may agree to waive their right to a jury trial. Parties may also enter into an agreement to toll a particular statute of limitations. In this case, waiver will take no substantial rights away from the parties. The Commission will still hear and decide the issues, just within an extended time frame.

11. Further, current circumstances affecting all parties, as well as the Commission and the ORS, demonstrate that a grant of the proposed waiver would be in the best interest of all parties, and this Commission, as it would ensure that adequate resources could be devoted to the broad list of issues set for resolution by the Commission without the undue time pressures associated with the nine month deadline.

12. Similar arbitration proceedings are ongoing in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina and Tennessee. *Triennial Review Remand Order* proceedings similar to Docket No. 2004-316-C (the Generic “Change of Law” Docket) and other arbitrations also

will be ongoing in these states. Accordingly, scheduling of this proceeding and all others must be coordinated, so that the same resources can be distributed to meet testimony, motions and briefing deadlines set in all nine states. The avoidance of scheduling conflicts, which require a high degree of advance planning and coordination in any event, will be made difficult if the waiver and rescheduling proposed in the Joint Motion are not implemented or granted.

13. Joint Petitioners, BellSouth and the ORS agree that they will waive 1) their right to petition the FCC under Section 252(e)(5) for a failure to act by the Commission within the statutory deadline and 2) their right to raise the failure to act within the statutory deadline on any appeal, if the Motion is granted.

14. The Joint Petitioners would note that the Commission has previously agreed to extend the statutory deadline for the Joint Petitioners and BellSouth, via Order No. 2004-470 issued in Docket No. 2004-42-C.

**JOINT PETITIONERS REQUEST THAT THE COMMISSION NOT REQUIRE
PREHEARING BRIEFS AND PROPOSED ORDERS PRIOR TO THE HEARING**

15. Order No. 2005-217 requires that the Parties “shall file prehearing briefs and proposed orders with the Commission on or before May 27, 2005.”

16. Joint Petitioners respectfully request that the Parties be allowed to provide any appropriate briefs and proposed orders following the hearing for the following reasons.

17. First, preparation and filing of these documents prior to the hearing would add to the already substantial testimony and hearing preparation workload of the parties. Allowing these documents to be created following the hearing, (as is customary in most Commission proceedings) will spread this workload.

18. Second, briefs and proposed Orders will have more significance and relevance to the Commission if they are created following the hearing.

19. Accordingly, the Joint Petitioners request that the Commission consider the following modifications to the Arbitration Plan and Schedule:

a. The Parties shall file Post-Hearing Briefs (and Proposed Orders if appropriate) 30 days following the date the Transcript of the hearing in this Docket is made available;

b. The Commission will hold an Oral Argument within 30 days following the filing of Post-Hearing Briefs, to allow the Parties to advocate their positions on issues relevant to the case.

WHEREFORE, the Joint Petitioners, with the consent and support of BellSouth and the ORS respectfully request that the Commission issue an order granting this Motion, issue an order extending the timeframe for resolving the unresolved issues in the above-captioned proceedings

for three months, until on or about October 6, 2005, modifying the procedural schedule as set forth herein, and granting such other relief as is just and proper.

Respectfully submitted,

By: John J. Pringle Jr. by *ck*
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Attorneys for the Joint Petitioners

Columbia, South Carolina
May 19, 2005

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-57-C**

In the Matter of)
)
Joint Petition for Arbitration of)
NewSouth Communications, Corp.,)
NuVox Communications, Inc.,)
KMC Telecom V, Inc.,)
KMC Telecom III LLC, and)
Xspedius [Affiliates] of an)
Interconnection Agreement with)
BellSouth Telecommunications, Inc.)
Pursuant to Section 252(b) of the)
Communications Act of 1934,)
as Amended)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Motion to Amend Arbitration Plan and Procedural Schedule** for filing on behalf of NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
P.O. Box 752
Columbia SC 29202

Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211



Carol Roof

May 19, 2005
Columbia, South Carolina
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